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November 21, 1994

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Ex Parte Notice -- MM Docket 92-260 and RM-8380

Dear Mr. Caton:

In accordance with Section 1.1200 et seq. of the Commission's Rules, Time Warner New York City Cable Group ("TWNYC")[1] hereby submits these comments regarding cable home wiring issues that have been raised before the Commission in the above-referenced proceedings.

I. To The Extent That The Commission's Home Wiring Rules Apply To Multiple Dwelling Units, They Are For The Benefit Of The Residents, Not The Owners, Thereof.

Time Warner has asserted repeatedly throughout the course of the home wiring proceedings (MM Docket 92-260, RM-8380, and ex parte notices relating thereto) that home wiring rules enacted pursuant to Section 16(d) of the Cable Television Consumer

[1]TWNYC is a division of Time Warner Entertainment Company, L.P. ("Time Warner"), an entity that has participated in all aspects of the home wiring proceedings referenced in this Ex Parte Notice. All references to or citation of documents submitted to the Commission in connection with home wiring issues were submitted by Time Warner.

Protection and Competition Act of 1992 ("1992 Cable Act")[2] should have a very limited application to internal cable wiring installed in multiple dwelling units ("MDUs").[3] Consistent with the plain language of the statute and Congress' intent, Time Warner has urged the Commission to exclude from the scope of applicability of the home wiring rules all wiring located outside the home or dwelling unit.[4] Thus far, the Commission has provided limited application of its home wiring rules to MDUs.[5]

Congress designed the home wiring provision to provide subscribers who voluntarily terminate cable service an opportunity to acquire the cable wiring installed within their homes or dwelling units.[6] The provision was not designed to provide landlords of MDUs with any particular benefits or opportunities. Indeed, the home wiring rules adopted by the Commission in 1993[7] specifically state that, upon voluntary termination of cable service, cable operators must give "the subscriber the opportunity to acquire the wiring at the replacement cost."[8] Nowhere in the home wiring rules is there any mention of conferring any benefits or privileges upon owners of MDUs whose tenants have terminated their subscriptions to cable service,[9] nor should there be.

A recent situation involving TWNYC's Paragon system serving New York City provides an excellent example of the abuse that can

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[2]Pub. L. 102-385, 106 Stat. 1460, § 16(d) (1992), codified at 47 U.S.C. § 544(i).

[3]See, e.g., Time Warner Comments in MM Docket 92-260, at 5-14; Time Warner Reply Comments in MM Docket 92-260, at 2-5.

[4]See H.R. Rep. No. 628, 102d Cong., 2d Sess. 118 (1992) ("House Report"); Time Warner Comments in MM Docket 92-260, at 5-14; Time Warner Reply Comments in MM Docket 92-260, at 2-5; Time Warner Reply Comments in RM-8380, at 8-10.

[5]See Report and Order in MM Docket 92-260, 8 FCC Rcd 1435, ¶ 12 (rel. Feb. 2, 1993) ("Report and Order"); 47 C.F.R. § 76.5(mm)(2).

[6]See House Report at 118.

[7]See Report and Order, 8 FCC Rcd 1435.

[8]47 C.F.R. § 76.802 (emphasis added).

[9]See 47 C.F.R. §§ 76.5(*ll*) and (mm), 76.801, 76.802.

and will occur if the home wiring rules are amended or interpreted to bestow benefits on MDU owners, rather than on the subscribers who live within the MDUs.[10] Tenants of four apartments in the 251 Central Park West MDU who had been subscribers to Paragon's cable service recently moved out of the building. The owner of 251 Central Park West then requested that Paragon immediately remove all cable wiring from the apartments vacated by its former subscribers. In the event that Paragon does not remove all cable wiring from such apartments, the owner of the MDU threatened to "hire its own contractor to do so and bill [Paragon] for these costs."[11] Under the present home wiring rules, the owner of the MDU cannot require Paragon to remove its wiring. Paragon is required only to offer the terminating subscriber the opportunity to purchase the home wiring at replacement cost.[12] If the subscriber declines such offer, then the cable operator may remove the home wiring within 30 days, or "make no subsequent attempt to remove it or to restrict its use."[13] Under no circumstances can the MDU owner require the cable operator to remove its home wiring, nor can the MDU owner charge the cable operator for the removal of such wiring.

If the cable operator elects to leave the home wiring in place, that wiring is for the benefit of the next tenant of the apartment, who may very well choose to subscribe to cable television service. Cable home wiring that is left in place is not left to benefit the MDU owner in any way. As evidenced by the situation in 251 Central Park West, an MDU owner can abuse any benefits granted it with regard to cable home wiring by attempting to charge the cable operator for use of its own wiring if subsequent tenants of the vacated apartments request to have cable service hooked up in their apartments.[14] Thus, cable operators could be charged to provide cable service over wiring that they paid to install and maintain. Such a situation should not be tolerated under the Commission's home wiring rules.

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[10]See Letter from S. Haberman to J. Nicolich, dated November 14, 1994, a copy of which is attached hereto as Attachment 1.

[11]Attachment 1.

[12]47 C.F.R. § 76.802.

[13]Id.

[14]See Attachment 1.

II. The Commission Should Ensure That The Home Wiring Rules Are Not Construed To Enable MDU Owners To Make Improvements To Their Buildings At Cable Operators' Expense.

Further support for the assertion that benefits and privileges regarding cable home wiring should not vest in MDU owners lies in the fact that MDU owners, like the owner of the 251 Central Park West building, can too easily abuse such benefits. For example, if the cable operator chooses not to remove its internal wiring from individual dwelling units -- a choice it is entitled to make under the Commission's existing home wiring rules -- and the MDU owner insists upon the removal of such wiring and hires a contractor to remove the wiring at the cable operator's expense, a certain degree of damage to the MDU premises may occur. MDU owners, in an attempt to pass costs for improving their premises, whether by painting, repairing walls or replacing molding, will be motivated to damage their own property during the removal of home wiring in an effort to hold cable operators liable for the repair of such damage, along with the cost of removing the wiring. If MDU owners are allowed to get away with such practices, cable operators might be held responsible for premises damage, and the repair thereof, which should never have occurred in the first place.

As demonstrated above, the intent of Congress in adopting the home wiring provisions of the 1992 Cable Act was to allow the subscribers (e.g., the actual residents of MDU buildings) to use the internal wiring installed within the dwelling unit to receive video programming from the distributor of their choice. Thus, if the cable operator elects not to remove the internal wiring from an MDU unit after a tenant terminates cable service and moves out, but rather elects to leave the wiring in place so that the next tenant can use that wiring to obtain multichannel video programming from the multichannel video programming distributor of his choice, the Commission should clarify that any actions by the landlord to remove or otherwise tamper with such wiring are prohibited. Landlords should not be allowed to undermine the Congressional policy underlying the home wiring provisions of the 1992 Cable Act.

For all the foregoing reasons, and for the reasons set forth in Time Warner's previous submissions to the Commission regarding cable home wiring, the Commission should not amend or interpret its home wiring rules to apply broadly to MDUs or to bestow

benefits and privileges on MDU owners rather than on the residents thereof.

Sincerely,

Arthur H. Harding

Arthur H. Harding

Attachment

cc: Meredith Jones
Gregory Vogt
Olga Madruga-Forti
Marian R. Gordon
Lynn Crakes
John Wong

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ATTACHMENT 1

LAW OFFICES OF
SIMON V. HABERMAN, P.C.
SUITE 4-A
ONE WEST 85TH STREET
NEW YORK, NY 10024-4132

CABLE SOLICITOR NY
TELEX 499 03 23
TELEFAX 212-362-7261

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November 14, 1994

LeBoeuf, Lamb, Greene & MacRae
125 West 55th Street
New York, New York 10019-5389

Att: John G. Nicolich, Esq.

Re: Removal of wiring at 251
Central Park West

Dear Mr. Nicolich:

Since your client did not adhere to my client's request that your client immediately remove all cable wiring from apartments 4B, 9B, 12B and 5F in the above building, my client will hire its own contractor to do so and bill your client for these costs.

On the other hand, if your client now claims that all the wiring becomes the property of the landlord, please notify your client that the landlord intends to charge your client for use of this wiring for any subsequent hook-up in these apartments.

Please govern yourself accordingly.

Very truly yours,

SIMON V. HABERMAN

SVH:rd

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